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In the Supreme Court of the United States

OCTOBER TERM, 1993

UNITED STATES OF AMERICA, PETITIONER

v.

ALFONSO LOPEZ, JR.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the Commerce Clause of the Constitution, Article I, Section 8, Clause 3, empowered Congress to enact 18 U.S.C. 922(q) (Supp. IV 1992), which makes it a federal offense to possess a firearm within 1000 feet of a school.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-54a) is reported at 2 F.3d 1342. The order of the district court (Pet. App. 55a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 15, 1993. The court of appeals denied a petition for rehearing on November 10, 1993. Pet. App. 56a-57a. The petition for a writ of certiorari was filed on February 2, 1994, and was granted on April 18, 1994. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Commerce Clause of the Constitution, Article I, Section 8, Clause 3, provides: "The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

2. The Necessary and Proper Clause of the Constitution, Article I, Section 8, Clause 18, provides: "The Congress shall have Power * * * To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

3. The provisions of 18 U.S.C. 921(a)(25), 921(a)(26), and 922(q) (Supp. IV 1992) are reprinted at Pet. App. 58a-60a.

STATEMENT

After a bench trial in the United States District Court for the Western District of Texas, respondent was convicted on one count of possession of a firearm within a school zone, in violation of 18 U.S.C. 922(q) (Supp. IV 1992). He was sentenced to six months' imprisonment, to be followed by two years' supervised release. The court of appeals reversed. Pet. App. 1a-54a.

1. This case presents the question whether the Gun-Free School Zones Act of 1990, Pub. L. No. 101-647, § 1702, 104 Stat. 4844, constitutes a permissible exercise of Congress's legislative authority under the Commerce Clause. That statute makes it unlawful "for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable

cause to believe, is a school zone." 18 U.S.C. 922(q)(1)(A) (Supp. IV 1992). Violators are subject to penalties of up to five years' imprisonment and a $5,000 fine. 18 U.S.C. 924(a)(4) (Supp. IV 1992). The Act defines a "school zone" to include the grounds of a public, private, or parochial school, or property within 1000 feet of such premises. 18 U.S.C. 921(a)(25) (Supp. IV 1992). The statute also contains several exceptions to its general prohibition on gun possession on and around school premises. 18 U.S.C. 922(q)(1)(B) (Supp. IV 1992).[1]

The Gun-Free School Zones Act was introduced in the House as H.R. 3757, 101st Cong., 2d Sess. (1990), and in the Senate as S. 2070, 101st Cong., 2d Sess. According to the sponsors of the legislation, its purpose was to "address the devastating tide of firearm violence in our Nation's schools." 135 Cong. Rec. E3988 (daily ed. Nov. 20, 1989) (Representative Feighan). As Senator Kohl explained in the course of introducing S. 2070, "[w]hen Congress mandated drug-free school zones in 1984, we declared that our Nation's classrooms deserve special protection. In the same way, this bill will help keep the areas around our schools from becoming sanctuaries for armed

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[1] For example, the statutory prohibition does not apply to firearms located on private property not part of school grounds, 18 U.S.C. 922(q)(1)(B)(i) (Supp. IV 1992); to individuals verified as qualified and licensed under state or local law to possess firearms, 18 U.S.C. 922(q)(1)(B)(ii) (Supp. IV 1992); to unloaded firearms stored in a locked container or on a locked firearms rack which is on a motor vehicle, 18 U.S.C. 922(q)(1)(B)(iii) (Supp. IV 1992); to individuals acting pursuant to a contractual agreement with the school, 18 U.S.C. 922(q)(1)(B)(v); or to law enforcement officers acting in their official capacity, 18 U.S.C. 922(q)(1)(B)(vi) (Supp. IV 1992).

criminals and drug gangs. Gun-free school zones * * * are an important step toward fighting gun violence and keeping our teachers and children safe." 136 Cong. Rec. 1165 (1990). Senator Kohl noted that "[t]he National School Safety Center estimates that more than 100,000 students carry guns to school every day, and that more than a quarter of a million students brought a handgun to school at least once in 1987." *Ibid.* The Act, he stated, would "ensure that our school grounds do not become battlegrounds." *Ibid.*

The Gun-Free School Zones Act was passed by the Senate as part of the Crime Control Act of 1990. See 136 Cong. Rec. S9477, S9519 (daily ed. July 11, 1990) (passage of Act by Senate); 136 Cong. Rec. S10,184, S10,240 (daily ed. July 20, 1990) (text of Act). Approximately two months later, the Act was the subject of hearings by a House subcommittee. See *Gun Free School Zones Act of 1990: Hearings Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 101st Cong., 2d Sess. (1990) (hereinafter *House Hearings*). Witnesses who appeared before the subcommittee agreed that the previous several years had "seen a marked, virtually continuous rise in the number of incidents involving firearms in or around school property." *Id.* at 26. The subcommittee also heard testimony regarding the deleterious effects of firearm violence upon the educational process. A representative of the National Education Association and National PTA, for example, stated that "[s]tudents in Chicago, New York, Miami, and elsewhere are exhibiting signs of 'post-traumatic stress syndrome.' Young children exposed to violence in the schools and in the neighborhood have become numb—seemingly immune to sights of brutality in the same

way as the children of Belfast, Beirut, or Johannesburg." *Id.* at 46-47. A separate statement issued by the National PTA noted that "creation of gun free school zones would send the message that schools are serious about providing safe environments so children can learn. Further, this bill is consistent with one of the national education goals set forth by the nation's governors and President—that 'by the year 2000, every school in America will be free of drugs and violence and [will] offer a disciplined environment conducive to learning.'" *Id.* at 77.

Although the hearings extensively addressed the impact of increasing firearms violence upon the educational system, the witnesses did not specifically discuss the effects upon interstate commerce of firearms possession on or near school property. During the hearings, one official of the Bureau of Alcohol, Tobacco and Firearms (BATF), expressed concern that the "source of constitutional authority to enact the legislation [was] not manifest on the face of the bill." *House Hearings* at 10. By contrast, that official noted, prior legislation restricting possession of firearms "contained specific findings relating to the Commerce Clause and other constitutional bases, and the unlawful acts specifically included a commerce element." *Ibid.*

The Gun-Free School Zones Act was not included in the House version of the Crime Control Act of 1990. The Act's prohibitions were adopted by the conference committee, however, see 136 Cong. Rec. S17,595 (daily ed. Oct. 27, 1990), and were enacted into law as Section 1702 of the Crime Control Act of 1990. See Pub. L. No. 101-647, § 1702, 104 Stat. 4844-4845. Neither the statute nor its legislative history contained express congressional findings regarding

the effects upon interstate commerce of gun possession in a school zone.[2]

2. On March 10, 1992, respondent, then a twelfth-grade student at Edison High School in San Antonio,

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[2] When the President signed the Crime Control Act of 1990 into law, he asserted that particular provisions of the legislation "unnecessarily constrain the discretion of State and local governments. * * * Most egregiously, section 1702 inappropriately overrides legitimate State firearms laws with a new and unnecessary Federal law. The policies reflected in these provisions could legitimately be adopted by the States, but they should not be imposed on the States by the Congress." Statement by President George Bush Upon Signing S. 3266, 26 Weekly Comp. Pres. Doc. 1944, 1945 (Nov. 29, 1990).

After the Fifth Circuit's decision in the instant case, the Senate passed an amended version of a House bill including specific findings that the actions proscribed by U.S.C. 922(q) affect interstate commerce. Violent Crime Control and Law Enforcement Act of 1993, H.R. 3355, 103d Cong., 1st Sess. § 2972 (*reprinted* as amended by the Senate at 139 Cong. Rec. S17,153-S17,154 (daily ed. Nov. 24, 1993)); see 139 Cong. Rec. S16,301 (daily ed. Nov. 19, 1993) (passage of Act by Senate). The Senate found, *inter alia*, that "firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools"; that "ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason"; that "the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country"; that "this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States"; and that "Congress has power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools." 139 Cong. Rec. S17,154 (daily ed. Nov. 24, 1993) (italics omitted).

Texas, arrived at school in possession of a concealed .38 caliber handgun, together with five bullets. In response to an anonymous tip, school officials confronted respondent, who admitted that he was carrying the weapon. He explained that an individual he identified as "Gilbert" had given him the gun to deliver to another individual after school for use in what respondent described as a "gang war." Respondent stated that he was to receive $40 for delivering the weapon. See Pet. App. 2a.

3. A grand jury indicted respondent for violating Section 922(q). Respondent moved to dismiss the indictment, arguing that Section 922(q) is unconstitutional. The district court denied the motion in a brief order, stating that Section 922(q)

> is a constitutional exercise of Congress' well-defined power to regulate activities in an[d] affecting commerce, and the "business" of elementary, middle and high schools, as exemplified by the "business" of Edison High School in San Antonio, a public high school organized under the laws of the State of Texas, affects interstate commerce.

Pet. App. 55a.

Respondent subsequently waived his right to a jury trial and was tried on stipulated evidence. The district court convicted respondent and sentenced him to six months' imprisonment, to be followed by two years' supervised release. See Pet. App. 3a.

4. The court of appeals reversed, rejecting the government's contention that the Commerce Clause empowered Congress to enact Section 922(q). Pet. App. 1a-54a. The court acknowledged the "great scope of the commerce power," *id.* at 37a, recognizing that "the Supreme Court has consistently deferred to

Congressional findings in this respect," *id.* at 40a, and that "Congressional enactments are, of course, presumed constitutional." *Id.* at 45a. The court nevertheless ruled that the statute is invalid. It stated that the interests of the States reflected in the Tenth Amendment support the view "that when Congress wishes to stretch its commerce power so far as to intrude upon state prerogatives, it must express its intent to do so in a perfectly clear fashion." *Id.* at 46a. In the court's view, the absence of express congressional findings regarding the effect on interstate commerce of the acts proscribed by Section 922(q) required the conclusion that Congress "has not taken the steps necessary to demonstrate that such an exercise of power is within the scope of the Commerce Clause." *Id.* at 48a. The court therefore vacated respondent's conviction, holding that "section 922(q), in the full reach of its terms, is invalid as beyond the power of Congress under the Commerce Clause." *Id.* at 53a.[3]

SUMMARY OF ARGUMENT

1. a. Pursuant to the Commerce Clause, Congress is empowered to regulate even intrastate, noncommercial activity that, in the aggregate, exerts a

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[3] The court considered it to be "conceivabl[e]" that a conviction under Section 922(q) "might be sustained if the government alleged and proved that the offense had a nexus to commerce." Pet. App. 53a. The court referred to the parties' stipulation that a federal agent was prepared to testify that respondent's gun had been manufactured outside the State of Texas. *Ibid.* Because the indictment failed to allege a commerce nexus, however, the court declined to consider whether a conviction on an indictment containing such an allegation would be sustainable. *Id.* at 53a-54a.

substantial impact on interstate commerce. Congress need not issue formal findings detailing the nexus between the regulated activity and interstate commerce, nor is it required to identify the Comerce Clause as the source of its power to act. In determining whether particular legislation represents a valid exercise of Congress's commerce power, courts must employ a "rational basis" standard reflecting substantial deference to legislative judgments. Thus, the question in this case is whether Congress could rationally have concluded that gun possession on and near school premises affects interstate commerce.

b. There is an abundant basis from which Congress could reasonably determine that the conduct proscribed by Section 922(q) affects interstate commerce. Through the mechanism of insurance, the economic consequences of violent crime are spread throughout the nation. In addition, violent crime affects interstate commerce by reducing the willingness of other individuals to travel to areas that are perceived to be unsafe. Congress could reasonably determine that these economic impacts, standing alone, establish a connection between incidents of firearm violence and commerce "among the several States." U.S. Const. Art. I, § 8, Cl. 3.

Quite apart from the foregoing economic impacts of firearm violence, Congress had ample basis for concluding that the presence of guns in schools poses an unacceptable threat to the proper functioning of primary and secondary education. Congress had ample basis as well to conclude that disruption of the educational process would have substantial deleterious effects on the national economy. Indeed, throughout the decade that preceded passage of the Gun-Free School Zones Act, the importance of primary and

secondary education to national productivity and economic competitiveness was the subject of extensive national concern and debate.

c. In holding that Congress's enactment of Section 922(q) had exceeded its powers under the Commerce Clause, the court of appeals emphasized the absence of formal findings detailing the nexus between the regulated activity and interstate commerce. That reasoning cannot be reconciled with this Court's precedents, which have made clear that Congress's exercise of the commerce power does not require the issuance of formal findings. This Court has also held repeatedly that rational-basis review does not involve an attempt to determine the chain of reasoning that actually motivated the legislature.

The court of appeals also erred in its reliance on decisions imposing clear-statement requirements in various legislative contexts. Most of the decisions on which the court of appeals relied involved potential incursions directly onto the operations of state governments rather than, as here, regulation of the conduct of private persons. In any event, clear-statement rules require only that Congress make plain the intended scope of its enactments. Congress is not obliged to explain its reasons for acting, to justify its decisions with "findings," or to identify the constitutional source of its authority. Any clear-statement requirement is satisfied in the present case: it is undisputed that Congress intended to proscribe the conduct for which respondent was convicted.

2. For the foregoing reasons, Section 922(q) would be constitutional even if Congress had never heard evidence or issued findings establishing a nexus to interstate commerce. Even if this Court could

appropriately review the "record" before Congress, however, the judicial inquiry would not properly be limited to the hearings and debates on the Gun-Free School Zones Act. In determining the propriety of a particular legislative proposal, Congress may quite properly draw upon the information and expertise that it has acquired in its consideration and enactment of earlier statutory provisions.

Passage of the Gun-Free School Zones Act did not (as the court of appeals believed) represent a substantial departure from earlier federal enactments. Rather, the Act is properly viewed as standing at the intersection of two lines of extensive legislation. Prior to the passage of Section 922(q), Congress had repeatedly acted upon the premise that national productivity and competitiveness depend substantially upon effective primary and secondary education. In addition, by 1990 Congress had acquired extensive information and knowledge regarding the hazards associated with firearms, and it had frequently regulated the transfer and possession of firearms as a means of preventing violent crime. The evidence adduced and findings made in the course of those prior legislative proceedings make clear that the Gun-Free School Zones Act is a permissible exercise of Congress's commerce power.

ARGUMENT

I. BECAUSE CONGRESS COULD REASONABLY HAVE CONCLUDED THAT POSSESSION OF FIREARMS ON AND AROUND SCHOOL PREMISES AFFECTS INTERSTATE COMMERCE, THE GUN-FREE SCHOOL ZONES ACT IS A VALID EXERCISE OF CONGRESSIONAL POWER

A. The Gun-Free School Zones Act Must Be Upheld If Congress Could Reasonably Have Concluded That Possession Of Firearms On Or Near School Premises Will Affect Interstate Commerce

1. It is well established that "[t]he power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce." *United States* v. *Darby*, 312 U.S. 100, 118 (1941). See also, *e.g.*, *Fry* v. *United States*, 421 U.S. 542, 547 (1975) ("[e]ven activity that is purely intrastate in character may be regulated by Congress, where the activity, combined with like conduct by others similarly situated, affects commerce among the States or with foreign nations"); *Perez* v. *United States*, 402 U.S. 146, 150 (1971).[4] Indeed, the regulated conduct need not itself

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[4] The power to regulate intrastate activity having a substantial effect on interstate commerce is reconfirmed by Congress's constitutional authority "[t]o make all Laws which shall be necessary and proper for carrying into Execution" its

be commercial: "[E]ven if * * * activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.'" *Wickard* v. *Filburn*, 317 U.S. 111, 125 (1942).[5]

2. It is of no consequence that particular conduct, considered in isolation, has no palpable impact upon interstate commerce. Instead, "[w]here the *class of activities* is regulated and that *class* is within the reach of the federal power, the courts have no power 'to excise as trivial individual instances' of the class." *Perez* v. *United States*, 402 U.S. at 154 (quoting *Maryland* v. *Wirtz*, 392 U.S. 183, 198 (1968)). Accord *Katzenbach* v. *McClung*, 379 U.S. 294, 300 (1964); *Wickard* v. *Filburn*, 317 U.S. at 127-128.

3. In determining whether a federal statute may be sustained as a proper exercise of Congress's power to regulate interstate commerce, the courts must apply a "rational basis" standard reflecting substantial

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enumerated powers. Art. I, § 8, Cl. 18. Cf. *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 36-37 (1937) ("The fundamental principle is that the power to regulate commerce is the power to enact 'all appropriate legislation' for its 'protection and advancement'.") (citing *The Daniel Ball*, 77 U.S. (10 Wall.) 557, 564 (1870)).

[5] Cf. *Summit Health, Ltd.* v. *Pinhas*, 500 U.S. 322, 332-333 (1991) ("We have no doubt concerning the power of Congress [under the Commerce Clause] to regulate a peer review process controlling access to the market for ophthalmological surgery in Los Angeles."); *id.* at 333 (Scalia, J., dissenting) (agreeing with Court's conclusion regarding Congress's constitutional authority).

deference to legislative judgments. See *Maryland* v. *Wirtz*, 392 U.S. at 198 (test is "whether there is a rational basis for regarding [challenged statutes] as regulations of commerce among the States"). "A court may invalidate legislation enacted under the Commerce Clause only if it is clear that there is no rational basis for a congressional finding that the regulated activity affects interstate commerce, or that there is no reasonable connection between the regulatory means selected and the asserted ends." *Hodel* v. *Indiana*, 452 U.S. 314, 323-324 (1981). "The pertinent inquiry therefore is * * * whether Congress could rationally conclude that the regulated activity affects interstate commerce." *Id.* at 324.

4. The rationality of federal legislation under the Commerce Clause does not require particularized congressional "findings" detailing the nexus between the regulated activity and interstate commerce.[6] In sustaining Title II of the Civil Rights Act of 1964 as a valid exercise of Congress's power to regulate interstate commerce, the Court noted that "no formal findings were made, which of course are not necessary." *Katzenbach* v. *McClung*, 379 U.S. 294, 299 (1964). Similarly in *Maryland* v. *Wirtz*, the Court stated:

> A major contention of the appellants in the present case is that the legislative history of the

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[6] Nor is Congress required, either in the text of the statute or in its legislative history, to identify the Commerce Clause as the source of its power to act. "The question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." *Woods* v. *Miller Co.*, 333 U.S. 138, 144 (1948). Accord *EEOC* v. *Wyoming*, 460 U.S. 226, 243-244 n.18 (1983).

> amendments now before us lays no factual predicate for extensions of the original Act. To the extent that this is true, it is quite irrelevant. The original Act stated Congress' findings and purposes as of 1938. Subsequent extensions of coverage were presumably based on similar findings and purposes with respect to the areas newly covered. *We are not concerned with the manner in which Congress reached its factual conclusions.*

392 U.S. at 190 n.13 (emphasis added). Accord *Perez* v. *United States*, 402 U.S. at 156; *United States* v. *Stillwell*, 900 F.2d 1104, 1111 (7th Cir.), cert. denied, 498 U.S. 838 (1990); *United States* v. *Evans*, 928 F.2d 858, 862 (9th Cir. 1991); *Morgan* v. *Secretary of HUD*, 985 F.2d 1451, 1455 (10th Cir. 1993); *Seniors Civil Liberties Ass'n* v. *Kemp*, 965 F.2d 1030, 1034 (11th Cir. 1992).

This rule is consistent with the legal principles generally applicable to rational-basis review of federal legislation. This Court has made clear that

> because [the Court] never require[s] a legislature to articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature. Thus, the absence of legislative facts explaining the distinction on the record has no significance in rational-basis analysis. In other words, a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.

FCC v. *Beach Communications, Inc.*, 113 S. Ct. 2096, 2102 (1993) (citations, brackets, and internal quota-

tion marks omitted).[7] Thus, judicial inquiry into the rationality of legislation "must be restricted to the issue whether any state of facts either known or which could reasonably be assumed affords support for it." *United States* v. *Carolene Products Co.*, 304 U.S. 144, 154 (1938). Accord *United States* v. *Evans*, 928 F.2d at 862 (test is "whether a reasonable Congress could find that the class of activity regulated affects interstate commerce").[8]

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[7] Although *Beach Communications* was an equal protection case, the principles enunciated therein are equally applicable to Commerce Clause analysis. The question whether a challenged statute may be upheld as regulation of interstate commerce (like questions concerning the propriety of legislative distinctions not implicating suspect classes) is reviewable under a rational-basis standard. See pages 13-14, *supra*. Thus, the fundamental principles set forth in *Beach Communications*—including the statements that the Court "never require[s] a legislature to articulate its reasons for enacting a statute" and that the absence of "legislative facts" or a formal "record" therefore "has no significance in rational-basis analysis," 113 S. Ct. at 2102—are applicable by their terms to Commerce Clause review. These principles ultimately rest on constitutional separation of powers considerations and on the fact that Article I of the Constitution makes no mention of legislative history or findings in prescribing the requirements for the enactment of federal laws. Rather, federal legislation takes effect upon a majority vote of each House and signature by the President, or upon a two-thirds vote of each House to override a veto.

[8] We acknowledge that the Court has on occasion phrased the applicable standard as one of "defer[ence] to a congressional finding that a regulated activity affects interstate commerce." *Preseault* v. *ICC*, 494 U.S. 1, 17 (1990); see also *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 276 (1981) ("The court must defer to a congressional finding that a regulated activity affects interstate commerce, if there is any rational basis for such a finding."). We do not believe, however, that such statements should be read as casting doubt

B. Congress Could Rationally Conclude That Gun Possession On Or Near School Grounds Affects Interstate Commerce

There is, in our view, an abundant basis from which Congress could rationally conclude that the conduct proscribed by Section 922(q) affects commerce "among the several States."

1. Congress could rationally conclude that incidents of violent crime, wherever they occur, can be expected to affect the functioning of the national economy. The economic consequences of criminal behavior are substantial[9] and, through the mechanism of insurance, spread throughout the population. See *United States* v. *Evans*, 928 F.2d 858, 862 (9th Cir. 1991) (finding it "reasonable for Congress to conclude that the possession of firearms affects the national economy, if only through the insurance industry").[10]

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upon the Court's prior and subsequent holdings that express findings to that effect are unnecessary. In other words, the congressional "finding" can very properly be—and often is—merely implicit in the enactment itself. Indeed, the legislative materials cited by the Court in *Preseault*, see 494 U.S. at 17-18, include no findings regarding impacts on interstate commerce and do not identify the Commerce Clause as the source of congressional power to enact the statute in question.

[9] See, *e.g.*, Ruttenberg, *The Limited Promise of Public Health Methodologies To Prevent Youth Violence*, 103 Yale L.J. 1885, 1887 n.11 (1994) (noting that "[o]ne study calculated the average cost of hospital treatment for gunshot victims at $13,200, with individual cases ranging as high as $495,000") (internal quotation marks omitted). See also *id.* at 1891-1893 (discussing dramatic increase during 1980s in juvenile involvement—both as perpetrators and as victims—in firearm violence).

[10] Cf. *United States* v. *Trioli*, 308 F. Supp. 358, 360 (D. Mass. 1970) ("While there may be differences of opinion as to

In addition, violent crime affects interstate commerce by reducing the willingness of other individuals to travel to areas within the country that are perceived to be unsafe. Cf. *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241, 253 (1964) (Title II of the 1964 Civil Rights Act is rationally related to interstate commerce because the uncertainty of black travelers regarding the availability of adequate transient accommodations "had the effect of discouraging travel on the part of a substantial portion of the Negro community"). Congress could reasonably determine that these economic impacts, standing alone, establish a connection between incidents of firearm violence and commerce "among the several States." Congress also could reasonably determine that a prohibition on gun possession on and around school premises would reduce the incidence of firearm violence.[11]

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whether traffic in guns or traffic in drugs poses the greater threat to the public safety, it is well within the power of Congress to find that because of the inherently dangerous nature of both, each, when used or abused in intrastate commerce, clearly affects interstate commerce.").

[11] There are at least four related bases upon which Congress might rationally have chosen to single out gun possession in and near schools for special restrictions. First, Congress might reasonably believe that the presence of guns is particularly likely to lead to violence in a congested area populated chiefly by juveniles. As a representative of the American Academy of Pediatrics testified at hearings on the Gun-Free School Zones Act, "[b]ased on our background in public health and preventive medicine, we conclude that children simply cannot coexist in the same environment with firearms. * * * A public health principle that has withstood the test of time is that you must separate in time and space children and the things that will surely harm them. It's true for the measles virus, it's true

2. Quite apart from the foregoing economic impacts of firearm violence, Congress had ample basis for concluding that the presence of guns in schools poses a substantial and unacceptable threat to the educational process. A representative of the Center to Prevent Handgun Violence testified that "[w]e all know that our children can't learn basic skills that

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for drain cleaner, it's true for a contaminated supply of drinking water, and it's true for guns." *House Hearings* at 51. Second, Congress could rationally determine that primary and secondary school students should be given enhanced protection against firearm violence. Cf. *New York* v. *Ferber*, 458 U.S. 747, 756-757 (1982) (recognizing "compelling" governmental interest in protecting the welfare of minors). Third, Congress might reasonably believe that the presence of guns in or near the schools would discourage well qualified persons from entering or staying in the teaching profession. See *House Hearings* at 44 (representative of National Education Association and National PTA testified that "fear of violence impedes the ability of schools to attract and retain qualified school personnel"). Finally, Congress might reasonably have concluded that there are few *legitimate* reasons to possess firearms on and around school grounds, and therefore a reduced need to balance the desire to prevent violence against countervailing concerns.

Congress's decision to prohibit gun possession at some locations while permitting it in others must be sustained so long as there is a rational basis for the distinction. "The process of legislating often involves tradeoffs, compromises, and imperfect solutions, and our ability to imagine ways of redesigning the statute to advance one of Congress' ends does not render it irrational." *Preseault* v. *ICC*, 494 U.S. 1, 19 (1990). Cf. *Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S. 456, 466 (1981) ("a legislature 'may implement [its] program step by step, . . . adopting regulations that only partially ameliorate a perceived evil and deferring complete elimination of the evil to future regulations' ") (quoting *New Orleans* v. *Dukes*, 427 U.S. 297, 303 (1976)); *Williamson* v. *Lee Optical Co.*, 348 U.S. 483 (1955).

are necessary for adulthood if they attempt to learn in an environment of fear. Rather than concentrating on English, math, and the sciences, many students are learning other lessons—lessons in basic survival." *House Hearings* at 39. She described the current educational environment in many parts of the country as one "where schools teach students the old nuclear war duck-and-cover drills to protect them from gunfire coming from the city streets, where schools in 15 States search students with metal detectors, and where an increasing number of school systems are using gun sniffing dogs and SWAT teams." *Ibid.* Similarly, a representative of the National Education Association and National PTA testified that "[t]he threat of violence is a significant factor in the dropout rate, the stress related to fear of violence threatens the educational goals related to student achievement, and fear of violence impedes the ability of schools to attract and retain qualified school personnel." *Id.* at 44. He noted that "[s]tudents in Chicago, New York, Miami, and elsewhere are exhibiting signs of 'post-traumatic stress syndrome.' Young children exposed to violence in the schools and in the neighborhood have become numb—seemingly immune to sights of brutality in the same way as the children of Belfast, Beirut, or Johannesburg." *Id.* at 46-47. A representative of the American Academy of Pediatrics testified that after exposure to violent episodes "[c]hildren will sleep poorly, children will eat poorly, some children will even grow poorly. Children will be unable to do their schoolwork, will be unable to enjoy life. And it's a process that can be well documented, not only in the year after the occurrence, but even for years later." *Id.* at 63. See also Ruttenberg, *The Limited Promise of Public*

Health Methodologies To Prevent Youth Violence, 103 Yale L.J. 1885, 1897 & nn.60-67 (1994) (discussing scholarly research documenting deleterious effects upon juveniles of exposure to violence).[12]

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[12] A statement issued by the National PTA in 1990 noted that the Gun-Free School Zones Act "is consistent with one of the national education goals set forth by the nation's governors and President—that 'by the year 2000, every school in America will be free of drugs and violence and [will] offer a disciplined environment conducive to learning.'" *House Hearings* at 77. The National Education Goals for the year 2000, developed by the President and representatives of the National Governors' Association, were announced in February 1990. See 26 Weekly Comp. Pres. Doc. 314-316 (Feb. 26, 1990). The National Education Goals Panel has emphasized the connection between school safety and educational achievement, observing that students in violent or drug-ridden schools "are much less likely to meet the Goals we set for them—to stay in school, perform at higher academic levels, and excel in mathematics and science." *The National Education Goals Report: Building a Nation of Learners* 44 (U.S. Gov't Printing Office 1992).

Earlier studies assessing the effects of student fear on academic performance are analyzed in Wayne & Rubel, *Student Fear in Secondary Schools*, 14 The Urb. Rev. 197 (1982). The authors conclude that students' "apprehensiveness" is inversely correlated to their grade-point averages. *Id.* at 204-205. They observe that "students are frequently led by apprehensiveness to avoid some school locations and that, in extreme cases, fear of the school setting makes students avoid school altogether." *Id.* at 230. They assert as well that fear of violence may have more pervasive effects on student perceptions of the school and their relation to it: "Apprehensiveness among students has an obvious impact upon the business of education: It reduces concentration on assigned tasks, creates an atmosphere of mistrust, and undermines school morale. More subtly, the school administrator's inability to reduce fear directly tells students that staff are not in control of the school's social climate—that student disorder is more powerful than the adult call for order." *Id.* at 230-231.

Congress had ample basis as well to conclude that such impediments to the educational process would have substantial deleterious effects on the functioning of the national economy. Indeed, the importance of primary and secondary education to national productivity and economic competitiveness was the subject of extensive national concern and debate throughout the decade that preceded passage of the Gun-Free School Zones Act.[13] "The impetus to improve the quality of elementary and secondary education gained a national focus in 1983, when more than 10 major reports or studies on school problems were released." *The Federal Role in Improving Elementary and Secondary Education* 7 (Congressional Budget Office May 1993). These reports reflected general agreement that "[t]oo many students are graduating from high school without the knowledge and skills necessary to be productive workers in a global economy." *Id.* at 8. Perhaps the best-known of these studies asserted that "[k]nowledge, learning, information, and skilled intelligence are the new raw materials of international commerce and are today spreading throughout the world as vigorously as miracle drugs, synthetic fertilizers, and blue jeans did earlier. If only to keep and improve on the slim competitive edge we still retain in world markets, we must dedicate ourselves to the reform of our educational system." National Commission on

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[13] As we explain at pages 35-40, *infra*, the link between education and American productivity was the subject of extensive congressional findings, and the premise for numerous enactments of federal legislation, throughout the 1980s.

Excellence in Education, *A Nation at Risk* 7 (Apr. 1983).[14]

In subsequent years various task forces and commissions continued to emphasize the importance of primary and secondary education to national productivity and competitiveness. For example, the National Commission on Jobs and Small Business emphasized that "[w]e must act on our understanding that education bears directly on our economic health and well being." National Commission on Jobs and Small Business, *Making America Work Again: Jobs, Small Business, and the International Challenge* 16 (1987). See also *id.* at 17 ("the rate of technological change in American work life portends a deepening crisis in the skill levels of our workforce"), 29. Another task force, focusing on the plight of

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[14] Other reports issued that year offered similar conclusions. One task force chaired by North Carolina Governor James B. Hunt, Jr., stated: "It is the thesis of this report that our future success as a nation—our national defense, our social stability and well-being and our national prosperity—will depend on our ability to improve education and training for millions of individual citizens." Task Force on Education for Economic Growth, Education Commission of the States, *Action for Excellence: A Comprehensive Plan to Improve Our Nation's Schools* 14 (1983). See also, *e.g.*, *id.* at 18 ("it is our judgment that a high general level of education is perhaps the most important key to economic growth"). A report to the President prepared by a panel of business and academic leaders noted that "poorly prepared and ill-trained workers ultimately make substandard contributions to productivity growth. A growing body of evidence indicates that many American workers lack fundamental skills in mathematics, science, critical thinking and verbal expression—primarily because of a shortage of well-trained faculty in the nation's public schools." Business-Higher Education Forum, *America's Competitive Challenge: The Need for a National Response* 22 (Apr. 1983).

"educationally disadvantaged" children, asserted that "[i]f present trends continue without corrective actions, American business will confront a severe employment crisis. This scarcity of well educated and well qualified people in the work force will seriously damage this country's competitive position in an increasingly challenging global marketplace." Committee for Economic Development, *Children in Need: Investment Strategies for the Educationally Disadvantaged* 4 (1987). A commission assembled by the Massachusetts Institute of Technology expressed similar views. See MIT Commission on Industrial Productivity, *Made in America: Regaining the Productive Edge* (1989). In discussing the forms of investment that it deemed "necessary to achieve a higher level of productive performance," the Commission asserted that "Americans must be provided with a fundamentally different education from what they receive today. Basic schooling from kindergarten through high school is seriously deficient to the extent that it leaves large numbers of its graduates without basic skills in reading, writing, and mathematics." *Id.* at 143. The Commission observed that "[t]he task of upgrading the primary and secondary schools is probably the single most important challenge facing the country." *Id.* at 152. See also *id.* at 21-22, 35-36, 81.[15]

Thus, during the decade prior to passage of the Gun-Free School Zones Act, there emerged a national

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[15] The day after its release the MIT Commission report was the focus of Senate committee hearings. See *Restoring American Productivity: The Role of Education and Human Resources: Hearing Before the Senate Comm. on Labor and Human Resources*, 101st Cong., 1st Sess. (1989).

consensus regarding the importance of primary and secondary education to American productivity and competitiveness. Against this backdrop, there can be no doubt that "Congress could rationally conclude that [gun possession in schools] affects interstate commerce." *Hodel* v. *Indiana*, 452 U.S. at 324.[16]

C. The Court Of Appeals Applied Erroneous Legal Standards In Ruling That Congress Had Failed To Establish A Sufficient Predicate For Its Decision To Prohibit Gun Possession On Or Near School Grounds

The court of appeals did not deny that Congress could rationally have concluded that the conduct proscribed by Section 922(q) would affect interstate commerce. Rather, the court emphasized the absence of formal congressional findings, noting that "[n]either the [Gun-Free School Zones] act itself nor its legislative history reflect[s] any Congressional determination that the possession denounced in section 922(q) is in any way related to interstate commerce or its regulation, or, indeed, that Congress was exercising its powers under the Commerce

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[16] This Court has previously recognized Congress's power under the Commerce Clause to protect industrial productivity by acting to prevent labor strife. See *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 41-42 (1937). Federal efforts to enhance the competence of the national work force bear a similar nexus to interstate commerce. This conclusion is not altered by the fact that the manner in which primary and secondary education affects workplace productivity might be characterized as "indirect." *Wickard* v. *Filburn*, 317 U.S. at 125. Cf. *Preseault* v. *ICC*, 494 U.S. 1, 19 (1990) (Congress may act under the Commerce Clause to protect railroad right-of-way for possible future railroad use "even if no future rail use for it is currently foreseeable").

Clause." Pet. App. 49a. The court asserted as well that "[c]ourts cannot properly perform their duty to determine if there is any rational basis for a Congressional finding if neither the legislative history nor the statute itself reveals any such relevant finding." *Id.* at 44a.

In thus treating Congress as comparable to an agency or trial court that must create a record suitable for appellate review, the court of appeals fundamentally misapprehended the nature of Congress's authority under the Commerce Clause and the role of the federal courts in discerning the legitimate bounds of that authority. The court of appeals' approach ignores this Court's clear holdings that Congress need not issue particularized findings in order to legislate under the Commerce Clause. See pages 14-15, *supra*. It ignores as well this Court's repeated admonitions that rational-basis review does *not* involve an attempt to determine the chain of reasoning that actually motivated the legislature. See, *e.g.*, *Beach Communications*, 113 S. Ct. at 2102 (citing cases).[17]

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[17] The court of appeals stopped short of imposing an absolute requirement that Congress's exercise of the commerce power be supported by formal findings, suggesting that "[c]onceivably, a purely informational void could be filled by evidence in court of the same general kind that might have been presented to a Congressional committee or the like concerning any relationship between the legislation and interstate commerce." Pet. App. 44a n.44. That approach, however, cannot be reconciled with this Court's recognition that "a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *Beach Communications*, 113 S. Ct. at 2102.

The court of appeals purported to "draw support for [its] conclusion concerning the importance of Congressional findings from recent holdings that when Congress wishes to stretch its commerce power so far as to intrude upon state prerogatives, it must express its intent to do so in a perfectly clear fashion." Pet. App. 46a. The court of appeals principally relied on this Court's decisions in *Pennsylvania* v. *Union Gas Co.*, 491 U.S. 1 (1989); *Dellmuth* v. *Muth*, 491 U.S. 223 (1989); *Gregory* v. *Ashcroft*, 111 S. Ct. 2395 (1991); and *United States* v. *Bass*, 404 U.S. 336 (1971). See Pet. App. 46a-48a. Those cases, however, are readily distinguishable.

1. This Court's decisions in *Union Gas*, *Dellmuth*, and *Gregory* involved potential incursions directly onto the operations of state governments. *Union Gas* and *Dellmuth* presented the question whether state agencies could be held liable for monetary damages notwithstanding the Eleventh Amendment; *Gregory* involved the application of federal law to the State's establishment of qualifications for its own judiciary, "a decision of the most fundamental sort for a sovereign entity." 111 S. Ct. at 2400. These decisions reflect the Court's recognition that special constitutional problems may be posed when Congress attempts to subject the States themselves to statutory duties, prohibitions, or liabilities. See, *e.g.*, *Atascadero State Hosp.* v. *Scanlon*, 473 U.S. 234, 238 (1985) ("the Eleventh Amendment implicates the fundamental constitutional balance between the Federal Government and the States"); *Gregory*, 111 S. Ct. at 2401 ("the States retain substantial sovereign powers under our constitutional scheme"); *New York* v. *United States*, 112 S. Ct. 2408, 2421 (1992) ("the Constitution has never been understood to confer

upon Congress the ability to require the States to govern according to Congress' instructions").

Congress has far greater latitude, however, when its Acts are applied to the activities of private parties who are incidentally subject to concurrent state regulation. "In providing for a stronger central government, * * * the Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States." *New York* v. *United States*, 112 S. Ct. at 2423. Thus, "Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States." *Id.* at 2421; see also *id.* at 2430-2431, 2435; pages 31-32, *infra*. Section 922(q) imposes no affirmative obligations upon state or local governmental units, nor does it limit the autonomy of state and local authorities with respect to curricular choices or allocation of resources. In important respects the statute *incorporates* state and local policy choices by exempting individuals licensed to possess firearms under state or local law, 18 U.S.C. 922(q)(1)(B)(ii) (Supp. IV 1992), individuals acting pursuant to contractual agreements with the school in question, 18 U.S.C. 922(q)(1)(B)(v) (Supp. IV 1992), and law enforcement officers acting in their official capacity, 18 U.S.C. 922(q)(1)(B)(vi) (Supp. IV 1992).

Indeed, while Congress possesses unquestioned authority under the Commerce Clause to preempt state law, see, *e.g.*, *New York* v. *United States*, 112 S. Ct. at 2435; *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. at 290, Congress has taken care in the present context to minimize even this limited form of intrusion on state prerogatives. The Gun-Free School Zones Act provides that "[n]othing in [18 U.S.C. 922(q)] shall be construed as

preempting or preventing a State or local government from enacting a statute establishing gun-free school zones * * *," 18 U.S.C. 922(q)(3) (Supp. IV 1992); the statute thus supplements rather than supplants the efforts of state and local authorities to address the problem of firearm violence in the nation's schools. Congress's intent to minimize preemption of state firearms laws is further evidenced by 18 U.S.C. 927, which states that "[n]o provision of this chapter [18 U.S.C. 921-930] shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on any subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together."[18]

2. For the foregoing reasons, clear-statement requirements are ordinarily imposed in contexts, such as the Eleventh Amendment, where the constitutional prerogatives of the States are directly implicated. In any event, the court of appeals' reasoning fundamentally misconstrues the requirement that Congress must, under certain circumstances, "express its intent * * * in a perfectly clear fashion." Pet. App. 46a. Clear-statement rules, where they apply, require only that Congress make

[18] Of course, Section 922(q) does displace state policy choices in the limited sense that its prohibitions apply even in States that have chosen not to outlaw the conduct in question. But that exercise of congressional power—reflecting no more than "the truism that States may not pre-empt federal law," *Adams Fruit Co.* v. *Barrett*, 494 U.S. 638, 649 (1990)—intrudes upon state autonomy only in a manner that the Constitution directly authorizes.

unmistakably plain the intended scope of its enactments. Congress is not obliged to explain its reasons for legislating,[19] to justify its decisions with "findings,"[20] or to identify the constitutional source of its authority to act. See *EEOC* v. *Wyoming*, 460 U.S. at 243 n.18.[21]

In the present case, any clear-statement requirement is satisfied: it is undisputed that Congress

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[19] Cf. *Pennsylvania* v. *Union Gas Co.*, 491 U.S. at 30 (Scalia, J., concurring in part and dissenting in part) (in applying clear-statement rules, the Court's task is "not to enter the minds of the Members of Congress—who need have nothing in mind in order for their votes to be both lawful and effective —but rather to give fair and reasonable meaning to the text of the United States Code").

[20] Cf. *Pennhurst State School & Hosp.* v. *Halderman*, 451 U.S. 1, 19 (1981) (statutory provision upon which plaintiffs relied "is simply a general statement of 'findings' and, as such, is too thin a reed to" satisfy clear-statement requirement). This Court has also held that clear-statement requirements generally cannot be satisfied by legislative history, no matter how directly it addresses the matter in question. See *Dellmuth* v. *Muth*, 491 U.S. 223, 230 (1989); *United States* v. *Nordic Village, Inc.*, 112 S. Ct. 1011, 1016 (1992). The Fifth Circuit's approach to Section 922(q), by contrast, ignores the clarity of the prohibition in the statutory text and focuses instead on the purported absence of extrinsic materials evidencing Congress's reasons for acting.

[21] Cf. *Dellmuth* v. *Muth*, 491 U.S. at 233 (Scalia, J., concurring) (clear-statement requirement for congressional abrogation of Eleventh Amendment immunity "does not preclude congressional elimination of sovereign immunity in statutory text that clearly subjects States to suit for monetary damages, though without explicit reference to state sovereign immunity or the Eleventh Amendment"); *Pennsylvania* v. *Union Gas Co.*, 491 U.S. at 56 n.7 (White, J., concurring in the judgment in part and dissenting in part) (same).

intended to proscribe the conduct for which respondent was convicted. This case is thus similar to *United States* v. *Culbert*, 435 U.S. 371 (1978), in which the Court rejected a proposed narrowing construction of 18 U.S.C. 1951(a) (1976). The Court quoted with approval its prior statement that "unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance." 435 U.S. at 379 (quoting *United States* v. *Bass*, 404 U.S. at 349). The Court held, however, that this "maxim[] of statutory construction" would "only apply when we are uncertain about the statute's meaning." 435 U.S. at 379 (internal quotation marks omitted). The Court declined to adopt a narrowing construction of Section 1951(a), explaining that "here Congress has conveyed its purpose clearly, and we decline to manufacture ambiguity where none exists." 435 U.S. at 379. "[R]ule[s] of statutory construction [used] * * * to divine the meaning of otherwise ambiguous statutory intent * * * simply have no relevance to the question of whether" Congress has legitimately exercised its powers under the Commerce Clause. *EEOC* v. *Wyoming*, 460 U.S. at 244 n.18.

3. Finally, there is no basis for the court of appeals' reliance on the Tenth Amendment (see Pet. App. 45a, 48a-49a) in support of its decision to invalidate Section 922(q). "The Court long ago rejected the suggestion that Congress invades areas reserved to the States by the Tenth Amendment simply because it exercises its authority under the Commerce Clause in a manner that displaces the States' exercise of their police powers." *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. at 291. The Tenth Amendment does, we

recognize, place limits on Congress's ability to impose requirements directly upon state governments. See *New York* v. *United States*, *supra*; see also *National League of Cities* v. *Usery*, 426 U.S. 833 (1976); *Garcia* v. *San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985) (overruling *National League of Cities*). Those limitations have no relevance, however, to congressional regulation of private activity. See *National League of Cities*, 426 U.S. at 845 (distinguishing between "the authority of Congress to enact laws regulating individual businesses" and the "exercise of congressional authority directed, not to private citizens, but to the States as States"); *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. at 287 ("a claim that congressional commerce power legislation is invalid under the reasoning of *National League of Cities* * * * [requires] a showing that the challenged statute regulates the 'States as States'"); see also *New York* v. *United States*, 112 S. Ct. at 2421, 2423, 2430-2431, 2435.[22]

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[22] Particularly inexplicable is the court of appeals' reliance (see Pet. App. 45a) on *United States* v. *Carolene Products Co.*, 304 U.S. 144, 152-153 n.4 (1938), for the proposition that the presumption of constitutionality of an Act of Congress has reduced force when Congress is alleged to have exceeded its powers under the Commerce Clause. The statute at issue in *Carolene Products* was challenged as exceeding congressional power under the Commerce Clause, and the Court sustained the legislation. 304 U.S. at 147-148. The Court's suggestion that in different circumstances "[t]here may be narrower scope for operation of the presumption of constitutionality," *id.* at 152 n.4, therefore quite plainly refers to questions *other than* those regarding the scope of the commerce power.

Nor is there any basis for the court of appeals' suggestion that the Second Amendment "may be something of a brooding

II. EVEN IF JUDICIAL ASSESSMENT OF THE "RECORD" BEFORE CONGRESS WERE APPROPRIATE, THAT "RECORD" FULLY SUPPORTS THE CONCLUSION THAT GUN POSSESSION IN AND NEAR SCHOOLS AFFECTS INTERSTATE COMMERCE

For the reasons we have stated, we believe that Section 922(q) would be constitutional even if Congress had never heard evidence or issued findings establishing a nexus between gun possession in schools and interstate commerce. Even if it were appropriate for this Court to review the "record" before Congress, however, the judicial inquiry would not properly be limited to the hearings and debates on the Gun-Free School Zones Act. As Justice Powell explained in *Fullilove* v. *Klutznick*, 448 U.S. 448 (1980):

> The creation of national rules for the governance of our society simply does not entail the same concept of recordmaking that is appropriate to a judicial or administrative proceeding. Congress has no responsibility to confine its vision to the facts and evidence adduced by particular parties. Instead, its special attribute as a legislative body lies in its broader mission to investigate and consider all facts and opinions that may be relevant to the resolution of an issue. One appropriate source is the information and expertise that Congress acquires in the consideration and enactment of earlier legislation. After

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omnipresence here." Pet. App. 45a n.46. Respondent does not contend that his conduct was protected by the Second Amendment, and any such contention would be insubstantial. See *United States* v. *Miller*, 307 U.S. 174, 178 (1939).

> Congress has legislated repeatedly in an area of national concern, its Members gain experience that may reduce the need for fresh hearings or prolonged debate when Congress again considers action in that area.

Id. at 502-503 (Powell, J., concurring).[23]

The court of appeals recognized this principle but deemed it irrelevant to the present case, see Pet. App. 50a n.49, asserting that "[no] prior federal enactments or Congressional findings speak to the subject matter of section 922(q) or its relationship to interstate commerce." *Id.* at 49a. That assertion was incorrect. Although "the primary public responsibility for education is reserved respectively to the States and the local school systems," 20 U.S.C. 3401(4), Congress has long recognized that the performance of the nation's schools implicates substantial federal interests as well.[24] In particular, well before the enactment of Section 922(q), Congress had repeatedly acted upon the premise that national productivity and competitiveness depend substantially upon effective primary and secondary education. Throughout the 1980s Congress heard voluminous testimony supporting that conclusion; it repeatedly issued findings to

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[23] Cf. *Maryland* v. *Wirtz*, 392 U.S. at 190 n.13 ("The original Act stated Congress' findings and purposes as of 1938. Subsequent extensions of coverage were presumably based on similar findings and purposes with respect to the areas newly covered.").

[24] See, *e.g.*, Department of Education Organization Act, Pub. L. No. 96-88, 93 Stat. 668 (1979); S. Rep. No. 49, 96th Cong., 1st Sess. 1 (1979) ("Establishment of a Department of Education would greatly increase the status and visibility of education in the Federal government and give it rightful recognition as a fundamental activity of American life.").

that effect; and it legislated frequently on the basis of that assumption. In addition, by 1990 Congress had acquired extensive information regarding the hazards associated with firearms. Thus, even if judicial examination of the "record" before Congress were appropriate, abundant evidence in that record supports the conclusion that gun possession on and near school premises affects interstate commerce.

A. Prior To Passage Of The Gun-Free School Zones Act, Congress Had Repeatedly Recognized The Importance Of Primary And Secondary Education To National Productivity And Competitiveness

1. In March and April 1983, a Senate subcommittee conducted extensive hearings regarding problems affecting primary and secondary education. See *Education for Economic Security Act: Hearings Before the Subcomm. on Education, Arts and Humanities of the Senate Comm. on Labor and Human Resources*, 98th Cong., 1st Sess. (1983) (hereinafter *1983 Senate Hearings*). In his opening statement Senator Stafford acknowledged that "education is principally a State and local responsibility" but observed that "there is also the national problem of our ability to cope generally with rapidly changing technology and changing labor-force requirements, and a pressing national need to improve our international economic competitiveness. These national problems demand a response at the Federal level." *Id.* at 1. Throughout the hearings Senators and witnesses appearing before the subcommittee repeatedly emphasized the importance of education—and, in particular, education in mathematics and

science—to American productivity and competitiveness.[25]

The following year Congress passed the Education for Economic Security Act, Pub. L. No. 98-377, 98 Stat. 1267 (1984). The Act provided financial assistance to primary, secondary, and postsecondary schools to improve instruction in mathematics and science. The findings set forth in the pertinent Senate Report began with the assertion that "[t]he United States faces an educational challenge of immense proportions. We face a crisis in the quality of the mathematics and science education, which is increasingly necessary for our citizenry to perform the demanding jobs which our prosperity, our security, and our liberty require." S. Rep. No. 151, 98th Cong., 1st Sess. 1 (1983). The report further noted that "[t]estimony before the Subcommittee on Education, Arts and Humanities clearly demonstrates that a lack of personnel competent in mathematics and science is among the most critical problems confronting America's high technology companies." *Id.* at 3. The House Report stated that deficiencies in mathematics and science education

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[25] See, *e.g.*, *1983 Senate Hearings* at 9 (Senator Domenici), 12 (Senator Hart), 21 (Senator Chiles), 30 (Dr. F. James Rutherford, Chief Education Officer, American Association for the Advancement of Science), 82 (Senator Quayle), 271 (Senator Hatch), 276 (Secretary of Education Bell), 372-373 (E.K. Fretwell, Jr., Chancellor, University of North Carolina at Charlotte), 477 (Gilbert D. Johnson, Electronic Data Systems, Inc.), 484 (Dr. Harry Handler, Superintendent, Los Angeles Unified School District), 552-553 (Arthur R. Pontarelli, Rhode Island Commissioner of Elementary and Secondary Education), 626-627 (Senator Tsongas), 710 (David A. Hamburg, M.D., President, Carnegie Corp. of New York).

"threaten to comprimise [*sic*] America's stature in the international marketplace, further weaken our industrial base, and undermine our national defense," H.R. Rep. No. 6, 98th Cong., 1st Sess. Pt. 1, at 14 (1983), and observed that "[o]ur nation is already paying the price of scientific and technological illiteracy, with our productivity declining, our industrial base ailing, and our global competitiveness dwindling." *Id.* at 19.

2. In 1988 Congress passed the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments, Pub. L. No. 100-297, 102 Stat. 130, an omnibus bill reauthorizing and expanding numerous programs of federal financial assistance for primary and secondary education. The Senate Report characterized the Act as "a prudent investment in our country's future," noting that "[t]here is growing recognition in every sector of society that such an investment in education is critical to our economic strength and national security." S. Rep. No. 222, 100th Cong., 1st Sess. 2 (1987).[26] The Report repeatedly emphasized the connections between the performance of primary and secondary schools, the ability of business and industry to assemble a skilled work force, and the maintenance of America's competitive position in the world economy. See, *e.g.*, *id.* at 3, 8, 16, 41, 63, 65-66, 75, 82, 85. The House Report expressed similar con-

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[26] The Senate Report quoted with approval a recent task force report stating that "[i]f present trends continue without corrective actions, American business will confront a severe employment crisis. This scarcity of well-educated and well-qualified people in the work force will seriously damage this country's competitive position in an increasingly challenging global marketplace." S. Rep. No. 222, *supra*, at 2.

clusions. See H.R. Rep. No. 95, 100th Cong., 1st Sess. 10-11, 61, 67 (1987).[27]

During the same year Congress passed the Education and Training for a Competitive America Act of 1988, enacted as Title VI of the Omnibus Trade and Competitiveness Act of 1988. See Pub. L. No. 100-418, 102 Stat. 1107, 1469. The statute included numerous findings regarding the nexus between education and American competitiveness. Thus, Congress found, *inter alia*, that "the relationship between a strong and vibrant educational system and a healthy

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[27] The connection between education and national productivity was attested to by senior officers of five major U.S. corporations, who appeared at a joint Senate-House hearing to express their support for reauthorization of expiring federal education programs. See *2 Reauthorization of Expiring Federal Elementary and Secondary Education Programs: Joint Hearing Before the Subcomm. on Elementary, Secondary, and Vocational Education of the House Comm. on Education and Labor and the Subcomm. on Education, Arts and Humanities of the Senate Comm. on Labor and Human Resources*, 100th Cong., 1st Sess. (1987). The witnesses noted that "[d]espite the diversity of our businesses and our regional locations, we are agreed that the quality of public schooling we provide to all our children, including disadvantaged children, will play a major role in the ability of the United States to develop a competitive economy and a strong society." *Id.* at 4. They stated that underinvestment in education "has severe consequences," citing one estimate that "the cost to private industry of retraining American workers who are not adequately educated in basic reading, writing, and computational skills is $2 billion per year." *Id.* at 5. See also *id.* at 32 ("we need knowledgeable, well-educated, highly skilled employees if our business is to succeed"); 42 ("the educational system perhaps is one of the most important underpinnings of the restoring of industrial competitiveness in this country in the future"); 49-50.

national economy is inseparable in an era in which economic growth is dependent on technology and is imperiled by increased foreign competition"; that "our standing in the international marketplace is being further eroded by the presence in the workforce of millions of Americans who are functionally or technologically illiterate or who lack the mathematics, science, foreign language, or vocational skills needed to adapt to the structural changes occurring in the global economy"; and that "restoring our competitiveness and enhancing our productivity will require that all workers possess basic educational skills and that many others possess highly specific skills in mathematics, science, foreign languages, and vocational areas." *Id.* at 1469-1470.

3. Two years later Congress passed the School Dropout Prevention and Basic Skills Improvement Act of 1990, Pub. L. No. 101-600, 104 Stat. 3042.[28]

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[28] During the years 1988-1990, Congress continued to gather evidence regarding the nexus between education and national competitiveness. See, *e.g.*, *Restoring American Productivity: The Role of Education and Human Resources: Hearing Before the Senate Comm. on Labor and Human Resources*, 101st Cong., 1st Sess. (1989); *U.S. Power in a Changing World: Report Prepared for the Subcomm. on International Economic Policy and Trade of the House Comm. on Foreign Affairs*, 101st Cong., 2d Sess. 43-66 (1990).

President Bush and the nation's Governors recognized this nexus as well. A joint statement issued at the conclusion of the Education Summit (involving the President and the National Governors' Association) in September 1989 asserted that "as [a] Nation we must have an educated workforce, second to none, in order to succeed in an increasingly competitive world economy." 25 Weekly Comp. Pres. Doc. 1487 (Oct. 6, 1989). The Education Summit led to the announcement, five months later, of the National Education Goals for the year 2000. See

Included in the Act was the finding that "in order for the Nation to regain its economic competitiveness, each child in the United States must be educated to his or her greatest potential and must be encouraged to finish secondary school." § 2(a)(2), 104 Stat. 3042. See also Excellence in Mathematics, Science, and Engineering Education Act of 1990, Pub. L. No. 101-589, § 101(a)(5), 104 Stat. 2883 (finding that "the achievement * * * of scientific and mathematical literacy by all Americans is an essential goal of all efforts to strengthen American competitiveness").

B. Prior To Passage Of The Gun-Free School Zones Act, Congress Had Frequently Regulated The Transfer And Possession Of Firearms As A Means Of Preventing Violent Crime

As we explain above, Congress by 1990 had accumulated voluminous evidence indicating that threats to the effective operation of American primary and secondary schools would have substantial effects upon the national economy. Congress had a substantial basis as well to conclude that the presence of firearms on and near school premises would undermine the schools' performance of their educational mission. The hearings on the Gun-Free School Zones Act featured extensive testimony regarding the deleteri-

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note 12, *supra*. The President subsequently explained that "[w]e know that we can't remain competitive or remain a world-class economy without first-class schools. So, we got together with the Governors and adopted national goals * * *. And if these work and if we're successful, * * * we're going to have * * * a return on our investment in expanded opportunity, more jobs, and a higher standard of living for Americans." 26 Weekly Comp. Pres. Doc. 424 (Mar. 15, 1990).

ous influence of school violence upon the educational process. See pages 4-5, 19-21, *supra*.[29] More generally, by 1990 Congress had acquired considerable experience in regulating the transfer and possession of firearms as a means of preventing violent crime.

1. Although "there is a long tradition of widespread lawful gun ownership by private individuals in this country," *Staples* v. *United States*, No. 92-1441 (May 23, 1994), slip op. 10, the right to procure and possess firearms has not been unrestricted. For more than half a century Congress has recognized that the destructive capabilities of firearms provide a basis for federal regulation of their transfer and possession. On that premise Congress has, *inter alia*, required that all firearms dealers be licensed by the federal government, 18 U.S.C. 922(a)(1); prohibited such dealers from selling firearms to juveniles, 18 U.S.C. 922(b)(1); prohibited the transfer of firearms to disqualified persons such as convicted felons, 18 U.S.C. 922(d); prohibited possession of any machinegun that was not lawfully possessed before enactment of the provision, 18 U.S.C. 922(*o*); prohibited possession of firearms not detectable by typical airport metal detectors, 18 U.S.C. 922(p); prohibited the transfer of a firearm knowing that it will be used in a crime of violence or drug trafficking crime, 18 U.S.C. 924(g) (Supp. IV 1992); and prohibited the possession of firearms within a federal facility, 18 U.S.C. 930 (1988 & Supp. IV 1992).

2. These statutory restrictions are grounded in express congressional findings regarding the de-

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[29] See also *Children and Guns: Hearings Before the House Select Comm. on Children, Youth, and Families*, 101st Cong., 1st Sess. (1989).

structive capabilities of firearms and their nexus to violent crime. For example, in enacting Title IV of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 225 (1968), Congress found that "the ease with which any person can acquire firearms other than a rifle or shotgun (including criminals, juveniles without the knowledge or consent of their parents or guardians, narcotics addicts, mental defectives, armed groups who would supplant the function of duly constituted public authorities, and others whose possession of such weapons is similarly contrary to the public interest) is a significant factor in the prevalence of lawlessness and violent crime in the United States." Pub. L. No. 90-351, § 901(a)(2), 82 Stat. 225. Congress found in addition that "there is a causal relationship between the easy availability of firearms other than a rifle or shotgun and juvenile and youthful criminal behavior." § 901(a)(6), 82 Stat. 225. The Senate Report accompanying the legislation observed that "[t]he principal purposes of title IV are to aid in making it possible to keep firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency, and to assist law enforcement authorities in the States and their subdivisions in combating the increasing prevalence of crime in the United States." S. Rep. No. 1097, 90th Cong., 2d Sess. 28 (1968).

3. Although the court of appeals recounted at length the history of federal firearms legislation, see Pet. App. 9a-36a, it found these prior enactments to be irrelevant, concluding that each of the activities previously regulated involved some nexus to interstate commerce that is absent from the Gun-Free

School Zones Act.[30] The differences among these statutory provisions, however, should not obscure the fact that they are based upon a common premise. Congress has repeatedly recognized that the presence of guns in the wrong hands and the wrong places can have destructive and destabilizing effects. And it has legislated repeatedly to address the potential consequences of firearm violence where those consequences substantially affect matters of federal concern.[31]

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[30] The court concluded that licensing requirements for firearms dealers are distinguishable from restrictions on possession; it based that conclusion on Congress's finding that the former were "necessary to adequate federal control of interstate and foreign commerce in firearms." Pet. App. 21a. Section 922(*o*) was distinguished on the ground that it is "restricted to a narrow class of highly destructive, sophisticated weapons that have been either manufactured or imported *after* enactment of the" statute. Pet. App. 26a. The court noted that "Section 922(p)'s employment of the standard of 'x-ray machines commonly used at airports' plainly reflects the act's interstate commerce related purpose and nexus." *Id.* at 30a. The court distinguished Section 924(g) on the ground that transfer of firearms may be "deemed more related to the regulation of interstate commerce than mere use or possession." Pet. App. 32a.

[31] Congress has concluded, for example, that the presence of firearms is (with very limited exceptions) simply incompatible with the proper functioning of federal government offices. See 18 U.S.C. 930 (1988 & Supp. IV 1992). Obviously Congress need not demonstrate a nexus to interstate commerce to protect the effective operation of federal facilities. But if (as we demonstrate above) the proper functioning of primary and secondary schools affects interstate and foreign commerce, then Congress may act to protect the schools just as it has acted to protect the facilities of the federal government.

As we have argued above, see pages 17-18, *supra*, we believe that violent crime *in general* imposes sufficient burdens on interstate commerce to permit Congress very broad latitude to enact measures rationally designed to reduce its incidence. But whatever constitutional limits there may be on Congress's power to combat violent crime generally, Congress had ample basis to regard the effective functioning of our country's schools as a matter of particular concern to the national economy. The Gun-Free School Zones Act is best viewed as standing at the intersection of two lines of extensive legislation. Congress has repeatedly noted the impact of primary and secondary education upon national productivity and competitiveness, and it has repeatedly legislated upon the premise that such a nexus exists. Congress has also acted frequently to restrict the transfer and possession of firearms in order to prevent the impairment of national interests. The evidence adduced and findings made in the course of those prior legislative proceedings make clear that the Gun-Free School Zones Act is a permissible exercise of Congress's power under the Commerce Clause, as well as a law "necessary and proper for carrying into Execution" that power.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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